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Human rights questions

Letter dated 10 August 1999 from the Permanent Representative of Ethiopia to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to transmit herewith a response to Amnesty International's report of 21 May 1999 by the Ministry of Foreign Affairs of the Federal Democratic Republic of Ethiopia, entitled "Ethiopia and Eritrea: Human Rights Issues in a Year of Armed Conflict", dated August 1999 (see annex).*

I should be grateful if you could kindly circulate the present letter and its annex as a document of the fifty-third session of the General Assembly, under agenda items 20, 105 and 110.

(Signed) Duri **Mohammed**
Ambassador
Permanent Representative

* The annex is issued in the language of submission only.



Annex

**Response to Amnesty International's report
of 21 May 1999**

**“Ethiopia and Eritrea: Human Rights Issues
in a Year of Armed Conflict”**



August 1999

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1. Introduction

It is with considerable puzzlement that the Ethiopian government and public have received Amnesty's Report of 21 May 1999, "Ethiopia and Eritrea: Human Rights Issues in a Year of Armed Conflict." It is well known that there has been disagreement between the Ethiopian government and Amnesty International over previous Amnesty reports on human rights violations. Since previous reports addressed alleged violations of the rights of Ethiopian citizens by the government, it was possible to countenance or even, on occasion, welcome the zeal of the organization in the defense of human freedoms, even if the particulars of the charges could not survive scrutiny. The present Report addresses a quite different context. In effect it attempts a comparison in the matter of respect for human rights and humanitarian law of two states in armed conflict. The new context clearly risks judgments flowing from political prejudice or bias, a risk that Amnesty itself openly acknowledges. Amnesty states, "in studying the human rights issues in the conflict between Ethiopia and Eritrea ... the organization was aware of the risks of seeming to favor one side's claims against the other in the highly-charged political atmosphere of the war" (page 3). We believe that Amnesty fails to avoid not merely the appearance but the actual expression of bias.

No reader can come away from the Report without the impression that in the Ethiopia-Eritrean conflict by far the greater offender in matters of human rights and humanitarian law is Ethiopia. We recognize that when it comes to poor countries such as ours, pronouncements by bodies like Amnesty are accepted on faith. We also recognize that faith is not easily amenable to counter-evidence and counter-arguments, especially if their source is the accused. Nonetheless, we believe any reasonable person can be made to see that the impression conveyed by the Amnesty Report is without foundation in fact and argument. At the very least, we hope those committed to human rights and especially to their fate in Ethiopia and Eritrea will be persuaded that it is a disservice to the human rights cause to accept pronouncements by such prestigious bodies on faith.

We shall try to establish that Amnesty's Report suffers from an alarming deficiency in the understanding or respect of accepted law, a reliance on methods of gathering and presenting evidence that seem subject to no clear standards, and, above all, a glaring partiality. Amnesty states that its findings are based on two "separate research visits to Ethiopia and Eritrea" (page 2). More importantly, it declares "Amnesty International, in accordance with its principles of independence and impartiality, gathers information on human rights issues within its mandate from a wide variety of sources, whose information it scrutinizes carefully to ensure that Amnesty International's own assessment and public reporting contains no political bias for or against any government or opposition group" (page 3). Our criticisms will not consist in putting forward fresh facts or counter-accusations. Instead the criticisms are designed to show that Amnesty fails to live up to its own avowed standards: independence, impartiality, careful scrutiny of information gathered, freedom from political bias.

2. Background to the Conflict and the Human Rights Situation in Ethiopia and Eritrea

In order to indicate the general tenor of the Report, the poor quality of its judgments, and its inattention to elementary facts, it would be useful to look at claims randomly and, all too often, inscrutably scattered throughout the text. It comes as a surprise that these flaws and faults permeate Amnesty's characterization of the general background to the conflict, an area at the periphery of the subject of violations during the conflict that is the core of Amnesty's concerns.

a. The OAU Peace Framework

Even Amnesty's narrative of the background to the conflict, which presumably it seeks to attend to with care because of its avowed interest to stay clear of political questions, does not steer away from biased judgments and disconcerting inaccuracies in the presentation of relevant facts. Specifically, we wish to draw attention to a striking misrepresentation of the Ethiopian government's position on the OAU Peace Framework and a thinly veiled effort to suppress crucial evidence contained in the Framework that finds against Eritrea.

A central part of the background has to do with the long and serious effort by friendly governments, regional and international bodies to avert armed conflict between the two countries. The most important instrument for maintaining the peace and for avoiding the tragic losses of war is the OAU Peace Framework, which was endorsed by the United Nations Security Council and by many governments and inter-governmental bodies. Ethiopia immediately accepted this proposal. Everyone would agree that Eritrea persistently rejected the OAU Framework until it suffered defeat at Badme. These plain facts about the OAU Framework and the very terms of the Framework receive a strange portrayal in the Amnesty Report. A minor, though telling, instance is Amnesty's statement that "Eritrea delayed acceptance of this agreement seeking further clarification" (page 8). This clearly imputes a standing intention on Eritrea's part to endorse the Peace Framework in the face of ample evidence of Eritrea's refusal of the Peace Framework.

More significantly, Amnesty is tendentiously selective in its characterization of the terms of the Peace Framework and their meaning. "The framework calls for the redeployment of forces around Badme to positions held before 6 May 1998, supervised by UN-supported OAU military observers. This was to be followed by a redeployment of troops under international supervision, from other contested areas and demilitarization of the whole border. Demarcation of the border would then take place, under UN auspices—possibly within six months. In the interim, the previous civilian administration would be reestablished, with the assistance of the OAU military observers" (page 8). This summary suffers from important omissions. It does not name the government which had jurisdiction over what is vaguely called here "the previous civilian administration." Nor does it explain why the Peace Framework called for a return of Ethiopian administrative jurisdiction.

These critical facts are relegated to a footnote in which the following is stated: "The OAU accepted, without prejudice to the final status of the area, that the disputed area had been under Ethiopian administration before the conflict started." This finding of the OAU, buried in a footnote in the Report, rests on a decision, reached after investigation, by the OAU that Eritrea forcibly entered an area under Ethiopian administration. Without prejudice to the merits of territorial claims, the OAU in this decision specified the immediate cause of armed conflict and the identity of the aggressor. Amnesty does not rest content with the attempt to underestimate and undervalue this critical provision of the OAU Framework, a provision that was, according to Eritrean authorities, the chief reason for Eritrea's refusal to accept the terms of peace. The Amnesty Report goes on to advance the astonishing interpretation that "Ethiopia regards [the OAU determination] as a confirmation that the area is part of Ethiopia" The Ethiopian government never entered this claim and, to the contrary, affirmed its willingness to submit a decision on territorial claims to international arbitration, which, in turn, is one of the provisions of the OAU Framework that Ethiopia accepted.

Outdoing itself in imputing grand territorial claims to Ethiopia, at a later point, Amnesty reports "many Eritreans believe that Ethiopia might seek to use the conflict to reincorporate Assab into Ethiopia, despite Ethiopian government assurances that it has no territorial ambitions on Assab or Eritrea in general" (page 22). This sentence, which appears in the main text of the Report has no bearing whatsoever on the subject under discussion, which is said to be "the situation in Assab in respect to human rights violations." Why announce the gratuitous conjecture about Ethiopian plans while marginalizing a central finding of the OAU about what actually was forcibly done to Ethiopian administered territory by the Eritrean government?

b. In Search of Precedents

The disposition to bias, unwarranted judgments tending to exonerate Eritrea and to condemn Ethiopia, as well as the failure to look obvious facts in the face infects Amnesty's attempt to establish the absence or existence of relevant precedents to the violations it investigates.

On page 11 of the Report we find the following striking statement: "In 1991 Eritrea had reportedly expelled an estimated 130,000 Ethiopians connected to the former armed forces and administration, although the new government subsequently adopted a more conciliatory policy to those allowed to remain." Save the omission of vast numbers of civilian deportees, the first part of this statement is accurate enough, although it does not sit well with many remarks elsewhere in the Report to the effect that the Eritrean government is disinclined to deport Ethiopians. The second half of the sentence is disconcerting. It seems to commend the Eritrean government on a change of policy for the better. The news appears to be that Eritrea has undergone a change of heart about deportations since 1991. But what exactly is the new policy concerning deportation adopted by the Eritrean government subsequent to 1991? The fact is that although

large numbers of Ethiopians were deported in 1991, there were Ethiopians who remained in Eritrea. Unless Amnesty wishes to praise the Eritrean government for not expelling all Ethiopians in 1991, there is no basis for talk about a change of policy, conciliatory or otherwise.

Turning to deportations on the other side, we find the following passage in the Report: "In Ethiopia, arbitrary detentions of suspected government opponents, including opposition parties and the private press, "disappearances" or torture and ill-treatment of political prisoners, are widespread. The government has made blanket denials of abuses and accused Amnesty International of being biased against it. Eritreans in Ethiopia had generally been strong supporters of the present Ethiopian government on account of the former close relations between the two governments going back to collaboration in the liberation struggles. Yet they became victims of some of the forms of repression applied by the Ethiopian security forces to their opponents" (page 11). This remarkable passage appears in a paragraph immediately prior to the paragraph in which the statement examined above appears, evidently inviting a comparison on human rights violations in the two states.

In considering Amnesty's beliefs concerning the Ethiopian government's treatment of opposition parties and the private press, it is instructive to see how it addresses Eritrea with regards to the same issues. Amnesty says in passing that "there are no opposition parties or independent NGOs in Eritrea." It omits to mention that there is no private press either. Neither does Amnesty comment on the consequences for human rights of the illegality of opposition parties, independent NGOs and a private press. Amnesty's stern criticisms of Ethiopia's relations with the legal opposition and the private press coupled with the silence over Eritrea's decision to outlaw these democratic institutions is rather jarring. It is obvious that where there are no citizens belonging either to independent or opposition groups that nobody can complain that rights are being infringed on account of membership in such groups. Therefore, Amnesty must be of the opinion that fundamental freedoms and rights of individuals are not denied by criminalizing a free press and a legal political opposition. Or else, it must subscribe to the strange view that there are fewer rights violations in an undemocratic polity than in a democratic society.

Moreover, it is altogether unclear how Amnesty arrives at the bold conclusion that there is a substantive similarity in the Ethiopian government's alleged treatment of its political opponents in the past and the treatment of Eritreans in the present. This is not the place to rehearse our objections to Amnesty's allegations about past human rights violations. What concerns us here is the connections that Amnesty attempts to establish between alleged past and present violations. Leaving aside now the vague charge of ill-treatment (addressed below), has Amnesty shown anywhere in the Report any, much less firm, evidential support that Eritreans in Ethiopia have been subjected either to torture or disappearances? "Disappearances" seems a curious charge to level in connection with people Amnesty claims to know have been expelled. (The allegation of arbitrary detention will be discussed below when we consider Amnesty's views about the law governing deportation.) A different, though no more defensible, way of reading

this passage from Amnesty is as an attempt to establish a looser, though no less sinister, pattern between the treatment of Ethiopian citizens and the treatment of Eritreans. Amnesty might be saying this is more of the same: a state Amnesty had claimed to be so harsh with its own citizens can be counted upon to be equally harsh with aliens. This of course is plainly an exercise in moral prediction and therefore rests on prejudgment of the facts.

3. The Eritrean Government's Violations of Human Rights and Humanitarian Law

The examples of bias cited so far, primarily having to do with insertions of free-floating, yet highly tendentious remarks, all favorable to Eritrea and unfavorable to Ethiopia, are relatively minor compared to the manifest partisanship expressed in the specific findings of the Report in respect to violations of human rights and humanitarian law by the Ethiopia and Eritrea in the conduct of the war. The Report's treatment of specific allegations brought against the two states is characterized by a constant inconsistency regarding where the burden of proof is placed and the stringency of the standards of conduct that are applied. Where Eritrean allegations against Ethiopia are concerned, the burden of proof is characteristically shifted to Ethiopia and standards of conduct are raised. The reverse is the case where Ethiopian allegations against Eritrea are concerned: the burden of proof is made to rest on Ethiopia and standards are typically lowered.

We confine ourselves to a few representative examples of Amnesty's handling of allegations brought against the government of Eritrea.

a. ICRC Inspection of Prisoners of War

The Report notes that Eritrea has denied ICRC access to Ethiopian POWs, in direct violation of the Geneva Conventions. Although Amnesty feels compelled to mention Ethiopian compliance with international law in respect to ICRC inspection of POWs, bafflingly its recommendation on the matter places the two parties on equal footing. On page 18 of the Report we find the following exhortation: "Amnesty International calls for the ICRC to be given immediate access to all prisoners of war in both Ethiopia and Eritrea, as the best guarantee of their humane treatment and observance by each side of the Geneva Conventions." It is difficult to fathom what occasions this recommendation in respect to Ethiopia given that Amnesty at no point alleges that Ethiopia has denied ICRC visitation of POWs. Equally disconcerting is the effort by Amnesty to mitigate, if not altogether exonerate, Eritrea's actions. The Report suggests that although Eritrea refused access to ICRC, the worry is allayed by the fact that Eritrea's war record in the past—as one can gather from statements made by none other than the Eritrean government itself—was good (see page 16). Amnesty seems particularly relieved by the fact that the Eritrean authorities have said they would grant journalists access to POWs, although, it declares, "none is known to have taken up this offer." Inspection by selected members of the press, who may or may not arouse

suspicion of partiality, is of course no substitute for inspection by an impartial body like ICRC, and it is simply inexcusable for Amnesty to suggest otherwise.

b. Mistreatment of Ethiopian civilians by Eritrean Authorities

More baffling still is Amnesty's confident dismissal of allegations of mistreatment of Ethiopian civilians by Eritrean authorities. On page 16 the Report states: "Amnesty is not convinced that there had been systematic or even widespread deliberate ill-treatment of Ethiopians by Eritrean forces which occupied Badme." Amnesty offers no evidence whatsoever to back this bold assertion, save the barren assurances of Eritrean authorities. Incidentally, this imprudent assertion undermines Amnesty's recommendation that Eritrea should establish an "independent and impartial inquiry into the claims of ill-treatment of Ethiopians in Eritrea and bring to justice anyone responsible for such ill-treatment." If Amnesty wishes to have this recommendation taken seriously, then it should not at the outset announce the conviction that this inquiry will come up with nothing.

Amnesty's hurried and baseless judgment strikes us as especially irresponsible given the gravity of the charges, which include systematic rape. It should also be noted that Amnesty's denial of ill-treatment of Ethiopian citizens by Eritrean authorities contradicts its own statements of what it was able to learn from personal interviews. Amnesty reports many interviews detailing severe beatings by Eritrean authorities. It also cites an interview with a woman who told Amnesty that "she and a friend had been raped by Eritrean soldiers on their way to church." Amnesty is obviously incredulous towards these first-hand reports, but there is nothing to indicate the basis for this incredulity. (We set aside its altogether dismissive posture towards abundant testimonies of rape and other egregious abuses of Ethiopians compiled and distributed by those engaged in humanitarian work in Ethiopia.) It is also worth noting that Amnesty's finding of widespread, indeed systematic, ill-treatment of Eritreans by Ethiopian authorities (to which we shall attend below) is based on nothing other than anecdotes similar to the ones it cites in connection with abuses perpetrated by the government of Eritrea. What, then, justifies the conviction of Eritrea's innocence as concerns the charge of widespread ill-treatment of Ethiopian civilians? At the very least, Amnesty could have inquired if any members of the Eritrean armed forces or police have been punished for ill-treatment of Ethiopian citizens. Had Amnesty posed this simple question to the Eritrean authorities, it might have inspired some confidence that its findings are not the mere expression of a blind faith in the Eritrean authorities in respect to observance of human rights and humanitarian law.

c. Illegal Detentions of Ethiopians in Eritrea

On allegations of illegal detentions of Ethiopians in Eritrea, Amnesty similarly seems happy to conclude its inquiry by citing Eritrean denials: "From the beginning of the conflict the Ethiopian embassy in Eritrea has been compiling and distributing lists of Ethiopians allegedly detained. The Eritrean authorities said that while some

Ethiopians were detained for purely criminal reasons, none were detained for such reasons as were alleged." The investigation apparently is brought to a conclusion at this stage: for example, Amnesty fails to report on allegations by Ethiopian deportees of either the numbers of prisoners or their conditions at Hawishayit and secret prisons at Assab and its environs. There is further no indication of attempts by Amnesty to check the veracity of the counter-claims entered by the Eritrean authorities.

d. Deportation of Ethiopians by the Eritrean Government

The overall conclusion of the Amnesty Report about the deportation of Ethiopians by the Eritrean government simply comes to the view that there are none. Amnesty's position seems to be that the Eritrean government continues to permit all Ethiopian residents to stay. Hence, all departures of Ethiopians are voluntary. The report acknowledges that tens of thousands of Ethiopians have returned to Ethiopia from Eritrea. Amnesty holds that these departures are prompted by economic distress, primarily having to do with the closure of the port of Assab. It is noteworthy that Amnesty's assessment of the nature and cause of Ethiopian departures from Eritrea is in full agreement with that of Eritrean authorities, whom Amnesty quotes as having said "that Ethiopians were free to return to Ethiopia or stay in Eritrea as they wished" (page 22).

This drastic conclusion rests on two claims. First, Amnesty holds that the Eritrean government has neither an official policy nor judicial or administrative procedures governing deportation. Second, Amnesty in its anecdotal findings has not come across Ethiopians ordered to leave by an Eritrean public authority. In its own words: "With regard to the allegations of deportations, none of the Ethiopians who had returned from Eritrea and were interviewed by Amnesty International in Ethiopia said that they had been ordered to leave by an Eritrean official or the police, nor had there been any official policy of withdrawing their ability to stay in Eritrea as foreign nationals or migrants" (page 25).

Amnesty's treatment of expulsion of Ethiopians from Eritrea harbors two fundamental mistakes. First, Amnesty seems to disallow the very possibility of obligatory departures that are carried out by means outside the law. Second, Amnesty seems blind to the fact that such arbitrary deportations—deportations not governed by policy or law—are by definition violations of rights.

It is clear that Amnesty subscribes to the view that anyone who was obliged to leave Eritrea by circumstances other than official policy or direct official order does not count as someone who has experienced forcible departure. The fact is that a government can coerce people to leave its territory without having an official policy to this effect or without issuing orders to this effect to the victims by public authorities. Article 13 of the UN Covenant on Civil and Political Rights protects aliens against arbitrary expulsion. "In its General Comment on the position of aliens under the Covenant, the Committee made clear that this guarantee relates to every form of

"obligatory departure" of aliens, regardless of how this is described under national law. It is to be applied equally to all forms of expulsion, deportation, exile, etc." (U.N. Covenant on Civil and Political Rights: CCPR Commentary [Dr. Manfred Nowak, Strasbourg, Engel Verlag, 1993, p.225]). The Covenant extends a firm guarantee against deportation not carried out by a court or an administrative authority on the basis of law. The absence of an Eritrean policy governing deportation means that, according to Article 13 of the UN Covenant, every instance of obligatory departure of Ethiopians from Eritrea is a violation of international law.

Nothing that Amnesty says serves to show that there were no Ethiopians subjected to obligatory departures. Indeed, apart from the case of Assab, Amnesty provides no explanation for why so many Ethiopians "volunteered" to leave. An effective way of compelling a person to leave is to create conditions that would make it impossible for the individual to lead a life. It is difficult to maintain that people who are detained, thrown out of work, evicted from their houses, deprived of identity cards and work permits solely for being Ethiopians are "free to return to Ethiopia or stay in Eritrea as they wished" (page 22). Amnesty itself reports that "after the bombings of Asmara Airport by Ethiopia on 5 and 6 June 1998, many Ethiopians working in Eritrean towns were sacked, apparently as a reprisal, and subsequently lost their rented housing through losing their means of income or, in some cases, by being evicted for being Ethiopian." The Report goes on to say that "many Ethiopians were forced to sleep on the streets outside the Ethiopian embassy in Asmara, in church compounds or elsewhere" (page 24). It is noteworthy that Ethiopians here described did not lose their means of livelihood because of general economic distress such as the closure of Assab. Amnesty relates the fate of one Ethiopian in the same period. "... Wolde Hagos a hotel worker was dismissed on the day that Asmara Airport was bombed. He told Amnesty International that he was arrested and taken to the 1st Police Station where he was beaten with his hands tied behind his back. After one month he was released but the police tore up his identity card and work permit. When he went to register at the Ethiopian embassy the police questioned him and asked him for his identity card. He said he was taken to another police station and beaten for not having an identity card" (pages 24-25). Would Amnesty take the position that Wolde Hagos and the countless Ethiopians in his position were free to stay in Eritrea?

Amnesty's lack of concern for the fate of Ethiopians forced out of Eritrea seems in part to stem from an unstated, latent prejudice. Unlike in the deportations of 1991, most Ethiopians deported presently are unskilled laborers whereas many Eritreans deported from Ethiopia belong to the middle class. It is difficult to resist the impression that Amnesty does not accord equal concern and respect to Ethiopian deportees just because they are economically and socially disadvantaged.

4. Ethiopian Deportations

In sharp contrast to its attitude towards the Eritrean government and its treatment of Ethiopians, which concludes with a verdict clearing the Eritrean government from any acts of deportation, Amnesty dwells on a host of violations that it alleges were

committed by the Ethiopian government in respect to deportation of Eritreans: mass expulsions, various forms of ill-treatment, violations of laws and rights in the decisions to deport as well as in their administration. An uncontroversial claim made by Amnesty about deportations by Ethiopia is that they were carried out in accordance with official policy and administrative procedures. Amnesty also rightly points out that Eritreans subject to deportation were those whose presence was deemed prejudicial to national security. The charges of violations—mass expulsions, various forms of ill-treatment, violations of laws and rights in the decisions to deport as well as in their administration—all rest on ignorance of law or error of fact and do not therefore survive scrutiny.

a. Charges of ill-treatment that are not legal offenses

Amnesty indignantly expresses outrage at certain forms of treatment to which deportees were allegedly subjected. Among these: deportees were taken from their homes in the middle of the night; they were allowed to take only one bag; windows of vehicles were kept shut during the journey. These acts are characterized by Amnesty as "cruel, inhuman and degrading." This judgment in respect to these acts is peculiar, and in more ways than one. First, it will be recalled that Amnesty speaks of Ethiopians being assaulted and raped in Eritrea. Amnesty nonetheless does not describe any Ethiopian in Eritrea as a victim of cruel, inhuman, and degrading treatment. The acts of which Ethiopia is said to be guilty are clearly not wrongs of this order. Secondly, they are not under Ethiopian law or any other legal system that we are aware of legal wrongs. Even if they prove to be offensive to Amnesty's sense of propriety, the offense may spring from simple misunderstanding. The restriction to one bag may look appalling if Amnesty either knows that the buses could safely accommodate more in the way of personal effects or if it did not know that the deportees in most cases have to travel on foot after crossing the Eritrean border until they could reach Eritrean authorities. It is also worth noting that the restriction on luggage during travel has no bearing on property rights and that due care was taken, as ICRC observers can testify, that essentials such as medicine for deportees under medication was taken. The complaint about closed windows can be registered by any passenger in a public bus in Ethiopia which everyone, including members of Amnesty's research team, can see to this day run with closed windows. As to the time of day when most deportees are apprehended, it would surely come as a surprise to, say, illegal immigrants in the West that they are secure from immigration authorities at night.

b. Alleged violations of the law

i. Mass expulsions

Amnesty is of the conviction that Ethiopia is guilty of mass expulsions. It provides no evidence or argument to support this grave contention. Amnesty seems to hold the innocent view that mass expulsions consist in the expulsions of people in large numbers. This innocent opinion is not itself supported, given that Amnesty itself allows that those deported between June 1998 and 6 February 1999 are a fraction of the Eritrean

population in the Ethiopia. Even if we do not dispute their figures, if numbers of deportees proportionate to total resident population were to count as a measure of mass deportation, it is mysterious that Amnesty does not describe the expulsion of 130,000 Ethiopians, by its own accounting a clear majority of Ethiopians residing in Eritrea, during the 1991 deportations as mass expulsion. At any rate, mass expulsion is a legal term and it has no more to do with numbers than does the crime of genocide. As representative of international law's construal of mass expulsions, it is helpful to consider Article 4 of Protocol No. 4 of the European Conventions on Human Rights which prohibits collective expulsions of aliens. The Commission held that "as long as an expelling state takes a separate decision in each case, there is no issue of collective expulsion" (Law and practice of the European Convention on Human Rights and the European Social Charter, [Donna Gomien et. al., Council of Europe, 1996, p.363]). In addition, the fact that the ground for deportation is identical in all the cases decided individually does not violate the prohibition on collective expulsion (Ibid.). Since Amnesty has not taken any steps whatsoever to demonstrate that the Ethiopian government in its administrative procedures governing deportations fails to take a separate decision in each nameable case, Amnesty has no case for entering a charge of mass expulsion. Indeed, under the law Amnesty will have a much easier time to establish the grave charge of mass expulsion against the Eritrean government where it is evident, if one is to accept Amnesty's own testimony, that the Ethiopians are obligated to leave Eritrea without any legal or administrative decision on individual cases.

ii. Violations of Property Rights

Amnesty states: "Universally, those expelled feared they would never see their personal, domestic or business properties again. After expulsion, Eritreans' property was often auctioned off to pay for supposed tax or loan debts, or was in some cases illegally acquired by other people." Once again, Amnesty does not here indicate what legal offense is committed by the Ethiopian government, except in the clause alleging illegal acquisition of Eritrean property by others for which it furnishes no evidence. The fact that some Eritreans, or even all Eritreans, deported expressed fear that "they would never see what they owned" has little bearing on whether or not their ownership rights are respected. No Eritrean property has been expropriated by the state. Even in cases of illegally acquired property, the state has not expropriated any property, but has rather initiated legal claims in courts of law. In some cases, banks and other parties who claim titles to property held by deported Eritreans have asserted their claims, claims which have been enforced upon being found valid. Amnesty does not provide a shred of evidence to vindicate the insinuation that tax or loan claims against the property of Eritrean deportees are legally invalid. It is also not lost on Amnesty, though it is not mentioned in the Report, that Eritreans subject to deportation are entitled to authorize persons to act as agents with full powers of stewardship of their property.

In contrast to the accusations leveled by Amnesty about the treatment of Eritrean property by the Ethiopian authorities, there is no mention of Eritrean confiscation of

property owned by the Ethiopian government and Ethiopian citizens. Most of the confiscated property consists in large shipments of industrial equipment and heavy transport vehicles seized at Assab port. It is common knowledge that this material, some belonging to foreign investors and public agencies, has been commandeered for the war effort.

iii. Family Separations

Amnesty charges the Ethiopian government of the serious offense of deliberate and systematic separation of family members. The suggestion is that there is coercive separation of spouses as well as of parents and their children. The fact is that Amnesty's evidence shows at most delayed family reunion which it fails to explain or understand. In some cases, Eritrean mothers and their children were allowed to stay behind for about one month so that the family would have an opportunity to name a legally authorized agent of its choice and to dispose of moveable property in an orderly fashion. In cases of mixed marriages, where a spouse is an Ethiopian citizen, the option of staying or leaving with the deported spouse was left to the Ethiopian spouse. The Ethiopian government had no choice but to honor the Ethiopian spouse's decision to remain behind. It is furthermore worth noting that the Ethiopian government's policy in mixed marriages is to exercise the decision to deport only in cases where the Eritrean spouse poses a grave and imminent danger to national security. Naturally, these are also the cases where the Ethiopian spouse is reluctant to join the deportee because of fears of entering an inhospitable or hostile community.

iv. Due Process Violations

Violations of due process in the administration of deportation registered by Amnesty are: detentions deemed arbitrary because they were not pursuant to a court order or a legal charge; expulsions without charge or conviction of a criminal offense; deprivation of the opportunity to challenge reasons for expulsion. All the above charges by Amnesty stem from a deep misunderstanding or confusion of what international law requires in respect to legal deportations.

First, international law acknowledges that legal deportations can be decided and executed by sovereign states through either judicial or administrative procedures. International law recognizes the state's ultimate authority in decisions over domestic jurisdiction in deportation as well as on their interpretation. In other words, international law takes no position on a state's choice between a court or an administrative authority. Moreover, the Committee of CCPR adheres to the Maroufidou formula: "The Committee takes the view that the interpretation of domestic law is essentially a matter for the courts and authorities of the State party concerned. It is not within the powers or functions of the Committee to evaluate whether the competent authorities of the State party in question have interpreted and applied the domestic law correctly in the case before it under the Optional Protocol, unless it is established that they have not interpreted and applied it in good faith or that it is evident that there has been an abuse of power" (CCPR Commentary, page 227).

The plain fact is that the Ethiopian government's decision to deport Eritreans is carried out under an administrative authority of the state and on the sole ground that those deported present a threat to national security. It is clear therefore that no deportee is charged or convicted under Ethiopian criminal law. Deportation, irrespective of the loss or pain it imposes, is not a form of criminal punishment for past offenses but rather a measure of protection against future risks or threats. Due process rights of criminal law do not therefore apply to deportations. Accordingly, Amnesty's claim that the deportations of Eritreans are violations of provisions governing criminal due process is entirely beside the point. To cite an authority on international law: "At the outset it is important to note the constant jurisprudence of the Strasbourg organs, that a decision to deport a person does 'not involve a determination of his civil rights and obligations or of a criminal charge against him'." (Law and practice of the European Convention on Human Rights and the European Social Charter, page 364). Amnesty's contention that Ethiopian deportations involve unlawful, arbitrary detention is similarly misplaced: "Article 5 (1) (f) of the [European] Convention sets forth one of the exceptions to the right to liberty, the state may detain someone against whom the state is acting with a view to deportation or extradition (an alien or a national)" (Ibid.). Nonetheless, in the administrative procedure governing deportations by the Ethiopian government there was an inquiry to determine case by case whether or not there were reasons to deport. Among the questions put to an Eritrean under the procedure are: voting in the Eritrean Referendum (to determine the person's citizenship status); leadership in the Eritrean Community Association; making financial contributions to the State of Eritrea; participation in Eritrea's national service; membership in PFDJ, the ruling party of Eritrea; leadership in PFDJ. An Eritrean organization, Citizens for Peace in Eritrea, testifies that deportees were given the opportunity to respond to these questions during the process of inquiry (The Uprooted: Part II, page 24). Unfortunately, Citizens for Peace in Eritrea concurs with Amnesty in the false belief that the inquiry is a criminal proceeding leading to what, in their view, are insupportable criminal charges.

This leaves Amnesty's charge that deportees have been denied the right to present reasons against expulsion to Ethiopian administrative authorities. Amnesty has not provided any evidence to show that Eritreans were refused an opportunity to present reasons against their expulsion. It is clear that the right of challenge or appeal in an administrative decision on deportation is far more limited than in judicial proceedings. For example, under the European Convention on Human Rights the right to submit reasons does not require review of the case by a different authority nor that the person submitting reasons be permitted to stay in the territory pending the outcome of the appeal, nor does it require the presence of the alien or his representative in the process of review or appeal (Law and practice of the European Convention on Human Rights and the European Social Charter, 365). These provisions explain the limits of Article 1 of Protocol No. 7 which reads:

An alien lawfully resident in the territory of a state shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed: a. to submit reasons against his expulsion; b. to have his case reviewed; and c. to be represented for these purposes before the competent authority or a person or persons designated by that authority.

Given the above mentioned limits placed on Article 1 of Protocol No.7,1, Amnesty shows nothing to indicate that the Ethiopian government has acted contrary to this Article in its administrative procedures for deportation. What altogether escapes the notice of Amnesty is the wide exception provided by Article 1 of Protocol No. 7, 2, which reads: "An alien may be expelled before the exercise of his rights under paragraph 1a, b and c of this article when such expulsion is necessary in the interest of public order or is grounded on reasons of national security." These provisions of the European Convention on Human Rights concerning the right to appeal and the exceptions allowed for reasons of national security are reflected in the UN Covenant on Civil and Political Rights. Under the covenant, Article 13 provides the right to appeal to a higher judicial or administrative authority. The opportunity to submit a complaint against expulsion and related due process rights may be suspended when reasons of national security are the grounds for deportation. Article 13 of CCPR reads: "An alien lawfully in territory of a State Party to the present Covenant may be expelled therefrom, only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority" (CCPR Commentary, page. 230 [emphasis ours]). In other words, given the Ethiopian government's official grounds for deportation—reasons of national security—there is no obligation to exercise the right of challenge or appeal before deportation.

v. Expulsion of Citizens

Finally, Amnesty alleges that the Ethiopian government is guilty of deporting non-alien, indeed of "mass-expulsion of non-alien." On page 31, the Report by Amnesty states: "... a huge number of Eritreans expelled from Ethiopia had their Ethiopian citizenship arbitrarily removed and were illegally and forcibly deported and sent into exile. The removal of Ethiopian citizenship and expulsion of people of Eritrean origin is a clear breach of international law." The source of the violation, according to Amnesty, is the Ethiopian government's decision to deport persons judged to pose a security risk who voted in the Eritrean Referendum in 1993. The decision, Amnesty charges, involves illegal removal of their Ethiopian citizenship: participation in the Eritrean Referendum vote does not constitute a legal basis for annulment of Ethiopian citizenship.

This grave accusation, reiterated at numerous points, rests on pure ignorance of the law. The Report correctly notes that, according to Article 11 (b) of the Ethiopian Nationality Law, a person forfeits his or her Ethiopian citizenship when he or she takes up foreign citizenship. (It also merits pointing out that the Eritrean Nationality Law, save by special appeal in exceptional circumstances, prohibits dual citizenship.) The Report, however, rejects the Ethiopian government's claim that persons who voted in the Eritrean Referendum are citizens of the State of Eritrea. "Although those expelled had identity cards which entitled them to vote in the referendum, and were entitled to take up Eritrean citizenship, if they wished, they had not formally done so, and so had

not formally renounced their Ethiopian citizenship" (page 30). This confident assertion by Amnesty, leading up to the allegation that the Ethiopian government is guilty of depriving deportees of their Ethiopian citizenship, is patently false. Minimal inspection of relevant Eritrean legislation would have disabused Amnesty of the impression that registering to vote in the Eritrean Referendum does not require the taking up of Eritrean citizenship. Article 27, Sub-Article 1, of the Eritrean Referendum Proclamation entitled "Registration Procedures" states: "When a person presents himself for registration, he must submit his Identity Card as proof that he meets the qualification set forth in Article 24 of this Proclamations." Article 24 of the Referendum Proclamation, entitled "Persons Qualified for Registration," reads as follows: "Any person having Eritrean citizenship pursuant to Proclamation No.21/1991 on the date of his application for registration and who was of the age of 18 years or older or would attain such age at any time during the registration period, and who further possessed an Identity Card issued by the Department of Internal Affairs, shall be qualified for registration" (emphasis ours). In other words, Eritrean law provides that only persons possessing Eritrean citizenship were entitled to register to vote in the Referendum vote.

The determination that voting in the Referendum entails adoption of Eritrean citizenship, which is mandated by Eritrean law, also furnished the basis for enforcement of the Extradition Treaty between Ethiopia and Eritrea, which was signed on 30 July 1993. Article 5 of the Treaty proscribes the extradition of nationals: "In no case, nor under any circumstances whatsoever, shall the Contracting States be bound to surrender their own nationals." Enforcement of the Treaty therefore required settlement of the issue of the determinants of Eritrean citizenship. In keeping with Eritrean law, the parties to the Treaty determined that persons who held identity cards as used for the Referendum registration were Eritrean citizens.

In sum, the Ethiopian government's view that persons who registered to vote in the Eritrean Referendum have taken up Eritrean citizenship is both mandated by Eritrean law and consistent with previous agreements forged by the governments of Ethiopia and Eritrea. Amnesty's allegation that Ethiopia is guilty of deporting non-aliens is therefore groundless.

5. Conclusion

Amnesty's Report is a travesty of an impartial and independent investigation. On virtually every issue regarding violations of human rights and humanitarian law, Amnesty sides with Eritrea, thereby depicting Ethiopia as guilty of greater and graver offenses. This has been shown above by sticking strictly to Amnesty's own claims. We set aside our evidence of serious violations by the Eritrean government to which Amnesty pays scant attention, for example: the tens of thousands of Ethiopians thrown out of Eritrea and cast off at the border by Eritrean authorities or the hundreds of thousands of Ethiopians coercively displaced from their homes and farms during Eritrea's forcible occupation of territory under Ethiopian sovereignty. As was shown, Amnesty's favorable portrayal of Eritrea is achieved through disregard of plain facts,

shoddy assembly and assessment of evidence, and cavalier ignorance or distortion of established standards of municipal and international law. All this would be far easier to countenance if Amnesty were defending the fundamental freedoms and entitlements of the individual against the powers of the state. It would also be more excusable if Amnesty in its past reports were more stringent on the Eritrean government and its insistence on maintaining a closed society—outlawing opposition parties, NGOs, an independent press—with obvious dire consequences for the rights of Eritrean citizens. What renders Amnesty's irresponsible Report singularly objectionable is that, once again, Amnesty openly champions the cause of a state against the rights of citizens. Even in the defense of the individual's fundamental rights, the credibility of a human rights organization in the end depends on its adherence to high standards. Amnesty must be mindful that it is particularly difficult to live up to high standards in the examination of a closed society where the state enjoys leeway in shaping and conveying its self-image to its own advantage. Amid armed conflict, the failure to discriminate between a crafted self-image and what truly lies behind it may well fuel rather than resolve conflict. Amnesty's Report does not avoid these pitfalls and the danger they court.

In sum, Amnesty's Report abounds with findings and judgments that anyone can reasonably reject. It is indeed sad that an institution that should be taken seriously labors to make it difficult to be taken seriously.
